IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

SATURDAY, THE 18TH AUGUST 2007 / 27TH SRAVANA 1929

CRP.No. 2783 of 2001(A)

E.A.754/00 IN E.P.39/94 IN OS.110/1986 of ADDL.SUB COURT,N.PARAVUR

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REVN. PETITIONER/PETITIONER/2ND JUDGMENT-DEBTOR:

M.M.GOPALAN, S/O.MANIAN, MADAVANA HOUSE,
THOTTAKKATTUKKARA, ALUVA.

BY ADV. SRI.MURALI PURUSHOTHAMAN

RESPONDENTS/2ND RESPONDENT/2ND DECREE-HOLDER & LEGAL HEIRS OF 1ST RESPONDENT-1ST DECREE-HOLDER:

1. M.M.SARASWATHY, W/O.SREENIVASAN, KARAYATHARA PARAMBIL, POONITHARA DESOM, POONITHARA VILLAGE.

2. NARAYANAN, SAMTHRIPTHI, NEAR R.L.V.MUSIC ACADEMY, THRIPUNITHURA.

3. SATHEESH, S/O.NARAYANAN, SAMTHRIPTHI, NEAR R.L.V.MUSIC ACADEMY, THRIPUNITHURA.

4. SURESH, S/O.NARAYANAN, SAMTHRIPTHI, NEAR R.L.V.MUSIC ACADEMY, THRIPUNITHURA.

5. SANTHOSH, S/O.NARAYANAN, SAMTHRIPTHI, NEAR R.L.V.MUSIC ACADEMY, THRIPUNITHURA.

(RESPONDENTS 2 TO 5 HEREIN ARE THE LEGAL HEIRS OF THE DECEASED 1ST PLAINTIFF/1ST DECREE-HOLDER WHO DIED DURING THE PENDENCY E.A.NO.754/00 IN E.P.39/94 IN O.S.NO.110/86)

R1 TO R4 BY ADV. SRI.K.N.NARAYANA PILLAI
SRI.S.VIDYASAGAR

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 18/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON C.M.P.NO.5894 OF 2001 IN C.R.P.NO.2783 OF 2001

DISMISSED

18.8.2007 SD/- PIUS C.KURIAKOSE, JUDGE.

PIUS C. KURIAKOSE,J.

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C.R.P. No.2783 of 2001

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Dated: 18th August, 2007

ORDER

Heard both sides.

2. The revision petitioner was the 2nd judgment-debtor in a final decree for partition and E.P.No.39/94 was filed for recovering the amounts which are due from him by way mesne profits. The mode of recovery was by bringing to sale the property which had been allotted to his share under the same final decree. When the E.P. was noticed the petitioner filed E.A.No.467/97 for stay of further proceedings in the E.P. on the ground that a suit filed by him for setting aside the preliminary decree was pending. E.A.No.467/97 was dismissed by the learned Subordinate Judge for default and E.P. was posted for proclamation of sale to 18.9.1998. The petitioner filed E.A.No.297/98 for rehearing of E.A.No.467/97. The learned Subordinate Judge on 6.1.2000 passed a conditional order of stay. The condition was that the petitioner shall deposit a sum of Rs.10,000/- and for compliance with the condition the case was posted to 17.2.2000. On 17.2.2000 the petitioner filed E.A.No.117/2000 for enlargement of time for making the deposit in full. In fact along with E.A. a part deposit of Rs.5000/- had been made. E.A.No.117/2000, the enlargement

application and E.A.297/98 were posted to 21.2.2000. On that day both the applications were dismissed by the learned Subordinate Judge. Against the order dismissing E.A.117/2000 the petitioner filed C.R.P.No.857/2000 before this court and this court ordered adjournment of the sale on condition that the petitioner deposits the entire balance amount due as per the E.P. before the execution court on or before 5.4.2000. In compliance with the above direction of this court the petitioner deposited the entire balance amount on 5.4.2000. The C.R.P. was finally disposed of granting stay after noticing that the entire balance amount is deposited. This court also clarified that the decree-holder will be entitled to withdraw the amount upon furnishing security. I am informed by both sides that the amounts so deposited by the petitioner has been withdrawn by the decree-holder on furnishing security as directed by this court. But on 20.10.2000 when the E.P. was considered again by the learned Subordinate Judge, without noticing the order of this court in C.R.P.No.857/2000, the court passed an order as follows:

"Stay is over. Sale is confirmed. Issue sale certificate."

The petitioner therefore filed E.A.No.754/2000 seeking a review of the above order. In the meanwhile, the first decree-holder had died

and the court dismissed E.A.754/2000 by the impugned order on the reason that the petitioner has not taken steps for impleading the legal heirs of the deceased first decree-holder. In this C.R.P. the legal heirs of the deceased first decree-holder are impleaded as respondents 2 to 5.

3. Mr.S.Vidyasagar, counsel for the respondents submits that the impugned order cannot be said to be tainted with jurisdictional infirmities so as to justify invocation of the revisional jurisdiction of this court under Section 115 C.P.C. Counsel also submitted that it is only the order in E.A.No.754/2000 which is impugned and this court may not be justified in this jurisdiction in granting full and final relief to the petitioner noticing that the entire amount has been paid off and actually withdrawn by the decree-holder.

4. It has to be observed that technically there is merit in the submission of Mr.Vidyasagar. But I am of the view that this is a case where the supervisory jurisdiction of this court under Article 227 of the Constitution can be invoked so as to mete out substantial justice to the parties. Concededly, the entire amount which was payable under the E.P. has been paid off and received by the decree-holder. It is also conceded that the suit O.S.No.528/93 filed by the petitioner

for staying the preliminary decree has been dismissed. I dispose of the C.R.P. issuing the following directions:

The order dated 20.10.2000 passed by the execution court in E.P.No.39/94 is set aside. The sale pursuant to which the above order passed is also set aside. The court below is directed to release the security furnished by the decree-holder for withdrawing the amount deposited by the petitioner to the decree-holder forthwith.

srd **PIUS C.KURIAKOSE, JUDGE**